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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,247	10/29/2001	Werner Obrecht	Mo-6599/LeA 34.920	8526

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BAYER POLYMERS LLC  
100 BAYER ROAD  
PITTSBURGH, PA 15205

EXAMINER

SHORT, PATRICIA A

ART UNIT	PAPER NUMBER
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1712

5

DATE MAILED: 04/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-5

# Office Action Summary

Application No.

10/033 247

Applicant(s)

Obrecht et al

Examiner

Shurt

Group Art Unit

17.2

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-7 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-7 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2, 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 102(e or b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over each of Obrecht '296 and EP '171. Obrecht '296 and EP '171 are believed to be equivalents. Each of the reference teaches rubber vulcanizates having high reinforcing action and low dynamic damping at elevated temperature comprising a rubber containing double bonds, a rubber gel and modifier for the rubber gel that can be a phosphoryl polysulfide. See Obrecht at col. 3, lines 43-51 and claims 8 and 9, and EP '171 at page 3, lines 44-47. Use of a phosphoryl polysulfide modifier is anticipated by or would have been obvious from the teachings of each of the references in order to obtain rubber vulcanizates having high reinforcing action and low dynamic damping at elevated temperature. As a choice of components is required, this rejection is made under both 35 U.S.C. 102 and 103.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Obrecht '488 alone or in view of CA '498. Obrecht '488 teaches rubber vulcanizates comprising rubber

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containing double bonds, rubber gel and a conventional sulfur donor for vulcanization. See col. 4, lines 49-59. Obrecht does not disclose phosphoryl polysulfide as a sulfur donor. CA '498 teaches phosphoryl polysulfide as sulfur donor for use in vulcanization of rubber. It would have been obvious to select a commercially available sulfur donor, such as phosphoryl polysulfide, known for its good reversion stability in vulcanized articles, as the sulfur donor in the rubber vulcanizates of Obrecht in order to improve reversion stability. Alternatively in view of CA '498, it would have been obvious to select phosphoryl polysulfide, known for its good reversion stability in vulcanized articles, as the sulfur donor in the rubber vulcanizates of Obrecht in order to improve reversion stability. Absent a showing of criticality commensurate in scope with the claims, the claims are unpatentable over the references.

P. Short

April 14, 2003

Phone (703) 308-2395

Fax (703) 872-9310

**PATRICIA A. SHORT**  
**PRIMARY EXAMINER**

